IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.MC.No. 813 of 2007()

CC.210/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT-I, KANNUR

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PETITIONER: ACCUSED

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1. P.V.MOHAMMED EQBAL,
   HAR CARS, SOUTH BAZAR, KANNUR.

2. P.V.SHAMSUDDEEN,
   HAR CARS, SOUTH BAZAR, KANNUR.

3. P.V.ABDUL SHUKKOOR,
   HAR CARS, SOUTH BAZAR, KANNUR.
   ALL THE ACCUSED RESIDING AT:
   "HEMZE", KANNOTHUMCHAL ROAD,
   THANA, KANNUR.

BY ADV. SRI.RAJESH NAMBIAR

RESPONDENTS: COMPLAINANT & STATE

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1. W.JAYAKUMAR, S/O UMA WIJE THILEKE,
   'GARDENS', BEACH ROAD, KANNUR.

2. STATE OF KERALA,
   REPRESENTED BY THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 813 OF 2007

Dated this the 6th day of June, 2007

ORDER

The petitioners are the accused in a private complaint and they face allegations, inter alia, under Secs.448 and 506(i) read with Sec.34 of the IPC. The petitioners have come to this Court with a prayer that the prosecution against them may be quashed.

2. According to the petitioners, Annexure-B agreement was entered into regarding the sale of an item of property belonging to the de facto complainant. The 1st petitioner/ accused was the intending purchaser. Rs.50,000/- in cash and a cheque for Rs.50,000/- were paid as advance. The cheque bounced and the payment was not secured. There is a dispute between the parties about that civil transaction. A civil suit has already been filed. The complainant alleges that the accused persons had trespassed into his house and indulged in wanton acts of violence consequent to the inability/failure to settle the civil dispute. A police complaint was filed. The police conducted investigation and referred the complaint as false. It is thereafter that the private complaint

was filed. The learned Magistrate does appear to have conducted an enquiry under Sec.202 of the Cr.P.C. There is an independent witness – a broker, by name `Pavithran' examined. The statement of that witness has been recorded as C.W.1 in such enquiry conducted by the learned Magistrate. A copy of the same has been made available for my perusal.

3. How can this complaint be quashed at this stage? What are the reasons to resort to such course? The learned counsel for the petitioners submits that the statement of Pavithran cannot be believed. The said Pavithran had given a different statement before the police. In these circumstances, the learned Magistrate must have given due weight to the final report submitted by the police and must also have looked at the broad improbability of the case.

4. I shall carefully avoid any detailed discussion on merits of the case of the contestants. I shall scrupulously avoid any expression of opinion on merits about the acceptability of the allegations or the credibility of the data collected. Pavithran who has been examined appears to be an independent witness who had brokered the transaction. His evidence as also the evidence of the complainant indicate satisfactorily that the

allegations are such that there is sufficient material to proceed in the matter. That and that alone is to be considered by a criminal court at the threshold at the stage of issuing process. The petitioner may have a good case to show that the sworn statement of the complainant and the said Pavithran cannot be accepted. But certainly that exercise will have to wait and this Court cannot in this proceedings under Sec.482 of the Cr.P.C. endeavour to assess, evaluate and weigh the evidence tendered by the witness. It follows from these circumstances that such a case has not been made out which warrants or justifies the invocation of the extraordinary inherent jurisdiction under Sec.482 of the Cr.P.C. to quash the complaint against the petitioner.

5. This Crl.M.C. fails and is therefore dismissed. I may hasten to reiterate that I have not intended to express any opinion on merits and the finding is only that there is no need to invoke the powers under Sec.482 of the Cr.P.C.

Sd/-

Nan/ **(R. BASANT, JUDGE)**

//true copy// **P.S. To Judge**

The grievance of the petitioner is that cognizance has been taken by the learned Magistrate without proper application of mind and without examining any witness at the stage of Sec.200/202 of the Cr.P.C. The learned counsel asserts that though police had referred the crime and all the witnesses cited were examined in the course of investigation by the police, the learned Magistrate had ignored the report and had not insisted on examination of the witnesses for the complainant at the stage of Sec.200 of the Cr.P.C.

2. Call for a report from the learned Magistrate. The learned Magistrate shall, in such report, explain to this Court the steps taken before process was issued under Sec.204 of the Cr.P.C. Call on 24/5/2007.

3. There shall be an interim stay as prayed for till 24/5/2007.